

EXHIBIT A

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ENDORSED
FILED

MAR 21 2011

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SONOMA

10 HITOSHI INOUE
11 WAKANA ANNA INOUE

12 Plaintiffs;

13 vs.

14 GMAC MORTGAGE
CORPORATION, a Delaware
15 Corporation; ETS SERVICES LLC, a
Delaware Limited Liability Company;
16 MED&G GROUP, a California
Limited Partnership; and DOES 001
17 through 025; inclusive,

18 Defendants.

Case No. SCV248256

Unlimited Civil

SECOND AMENDED VERIFIED COMPLAINT

1. PROMISSORY ESTOPPEL;
2. SET ASIDE TRUSTEE SALE;
3. SET ASIDE TRUSTEE DEED;
4. RECOVERY OF DAMAGES FOR
WRONGFUL FORECLOSURE;
5. FRAUD;
6. NEGLIGENT MISREPRESENTATION;
7. NEGLIGENCE;
8. QUIET TITLE;
9. DECLARATORY RELIEF;
10. INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS.

DEMAND FOR JURY TRIAL

Judge: Honorable Patrick Broderick
Court: Department 19
3055 Cleveland Avenue
Santa Rosa, California
95403

Action Filed: September 20, 2010
Trial Date: Not yet set

26
27 Comes now Plaintiffs Hitoshi Inoue and Wanaka Anna Inoue who present this Second
28 Amended Verified Complaint (hereinafter "COMPLAINT") and allege as follows:

1 //

2 **GENERAL ALLEGATIONS**

3 1. Plaintiff Hitoshi Inoue and Wakana Anna Inoue, father and daughter, were at all
4 times herein residents of Sonoma County, California and are hereinafter collectively referred to
5 as "PLAINTIFFS."

6 2. PLAINTIFFS are informed and believe and on that basis allege that Defendant
7 GMAC Mortgage Corporation is a corporation formed and existing under the laws of the State of
8 Delaware and qualified to and is doing business in the State of California and has its principal
9 place of business in Detroit, Michigan. Defendant GMAC Mortgage Corporation and it's
10 authorized agents DOE-001 through DOE-006, are all hereinafter referred to collectively as
11 "GMAC".

12 3. PLAINTIFFS are informed and believe and on that basis allege that Defendant
13 ETS Services LLC (hereinafter "ETS SERVICES") is a Limited Liability Company formed and
14 existing under the laws of the State of Delaware, and is qualified to and is doing business in the
15 State of California, and has its principal place of business in Burbank, California. PLAINTIFFS
16 have named ETS SERVICES herein as an indispensable party against whom no relief is sought.

17 4. PLAINTIFFS are informed and believe and on that basis allege that Defendant
18 MED&G Group (hereinafter "MED&G") is a Limited Partnership formed under the laws of the
19 State of California, is qualified to and is doing business in the State of California, and has its
20 principal place of business in Santa Rosa, California.

21 5. PLAINTIFFS do not know the true names and capacities of those Defendants
22 sued herein as DOES-001 through DOES-025, and therefore sue these Defendants by such
23 fictitious names. PLAINTIFFS will amend the COMPLAINT to allege their true names and
24 capacities when ascertained. PLAINTIFFS are informed and believe and thereon allege that each
25 of the fictitiously named Defendants DOES-001 through DOES-025 either caused damages to
26 PLAINTIFFS or claim some right, title, estate, lien or interest in the real property at issue herein
27 adverse to PLAINTIFFS title and interest therein. PLAINTIFFS are informed and believe and
28 thereon allege that each of these fictitiously named Defendants DOES-001 through DOES-025

1 are responsible in some manner for the occurrences herein alleged, and that PLAINTIFFS
2 injuries were proximately caused by such Defendants DOES-001 through DOES-025.

3 6. PLAINTIFFS are informed and believe and thereon allege that at all times herein
4 mentioned each Defendant was the agent and employee of each of the remaining Defendants and
5 was acting within the course and scope of said agency and employment and with the knowledge
6 and consent of the remaining Defendants.

7 //

8 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

9 7. On or about June 23, 1995 PLAINTIFFS purchased certain real property in
10 Sonoma County, California commonly known as 3735 Coffey Lane, Santa Rosa, California,
11 95403-1616 also bearing Assessor's Parcel Number 058-032-016-000 (hereinafter
12 "PROPERTY").

13 8. In connection with the purchase of the PROPERTY on about April 19, 2003
14 PLAINTIFFS executed a purchase money promissary note payable to GMAC Mortgage
15 Corporation in the sum of \$248,000.00 (hereinafter "NOTE"). The NOTE was secured by a deed
16 of trust on the PROPERTY which was recorded on May 7, 2003 with the Sonoma County
17 Recorder bearing document number 2003-092480 in the official records of Sonoma County
18 (hereinafter "DEED OF TRUST"). A true and correct copy of the NOTE and DEED OF TRUST
19 is attached hereto and marked as Exhibit "A".

20 9. Cal. Civ. Code §2924c(e) provides in part as follows:

21 "Reinstatement of a monetary default under the terms of an obligation secured by
22 a deed of trust, or mortgage may be made at any time within the period
23 commencing with the date of recordation of the notice of default until five
business days prior to the date of sale set forth in the initial recorded notice of
sale."

24 10. Paragraph 19 of the DEED OF TRUST is entitled "BORROWER'S RIGHT TO
25 REINSTATE AFTER ACCELERATION" and provides as follows:

26 "If borrower meets certain conditions, Borrower shall have the right to have
27 enforcement of this security instrument discontinued at any time prior to the
earliest of (a) five days before sale of the Property pursuant to any power of sale
28 contained in this Security Instrument ... Those conditions are that Borrower (a)
pays lender all sums which then would be due under this security instrument and

1 the note as if no acceleration had occurred... ."

2 11. At all times herein, PLAINTIFFS were advised that any inquiries regarding the
3 NOTE and DEED OF TRUST should be directed solely to GMAC, and at all times herein
4 PLAINTIFFS have dealt solely with GMAC.

5 12. On December 9, 2003 PLAINTIFFS borrowed \$30,000 from Bank of America. In
6 exchange PLAINTIFFS granted Bank of America a second deed of trust on the PROPERTY. A
7 true and correct copy of the Bank of America note and deed of trust are attached hereto and
8 marked as Exhibit "B".

9 13. On July 23, 2004 PLAINTIFFS borrowed \$50,000 from Bank of America. In
10 exchange PLAINTIFFS granted Bank of America a third deed of trust on the PROPERTY. A
11 true and correct copy of the Bank of America note and second deed of trust are attached hereto
12 and marked as Exhibit "C".

13 14. From June of 1995 through approximately May of 2010 PLAINTIFFS made
14 monthly mortgage payments pursuant to the NOTE of approximately \$1,447.27 to GMAC.

15 15. In May, 2010 the consulting contract Plaintiff Hitoshi Inoue had with GreenVolt
16 Inc. ended. As a result of the loss of this income, PLAINTIFFS were no longer able to make
17 mortgage payments to GMAC.

18 16. Because PLAINTIFFS had fallen behind on payments, GMAC, through their
19 agent ETS SERVICES recorded a Notice of Default against the PROPERTY on May 20, 2010
20 with the Sonoma County Recorder bearing document number 2010-041850 in the official
21 records of Sonoma County (hereinafter "NOTICE OF DEFAULT"). A true and correct copy of
22 the NOTICE OF DEFAULT is attached hereto and marked as Exhibit "D".

23 17. In response to the Notice of Default, PLAINTIFFS applied for a loan
24 modification with GMAC in June of 2010. A true and correct copy of this loan modification
25 application is attached hereto and marked as Exhibit "E".

26 18. On July 19, 2010 GMAC sent a letter to PLAINTIFFS stating that the loan
27 modification was not complete because Plaintiff Hitoshi Inoue was self-employed, and
28 profit/loss statements would be required. A true and correct copy of this letter is attached hereto

1 and marked as Exhibit "F".

2 19. On July 19, 2010 PLAINTIFFS contacted GMAC by telephone at 888-714-4622
3 and asked about the status of the loan modification. An authorized representative of GMAC told
4 PLAINTIFFS that the loan modification was under review.

5 20. On July 20, 2010 PLAINTIFFS prepared a profit and loss statement and mailed
6 it to GMAC. A true and correct copy of this statement is attached hereto and marked as Exhibit
7 "G".

8 21. On July 30, 2010 GMAC sent a letter to PLAINTIFFS stating that the loan
9 modification application was denied due to insufficient income. PLAINTIFFS did not receive
10 this letter for several weeks after it was sent. A true and correct copy of this letter is attached
11 hereto and marked as Exhibit "H".

12 22. On August 4, 2010 PLAINTIFFS contacted GMAC by telephone at 888-714-
13 4622 and inquired as to the status of the loan modification. The authorized representative of
14 GMAC did not tell PLAINTIFFS that the loan modification was denied. The authorized
15 representative of GMAC told PLAINTIFFS that the loan modification was still under review.

16 23. On August 20, 2010 GMAC, through their agent ETS SERVICES, recorded a
17 Notice of Trustee's Sale against the PROPERTY with the Sonoma County Recorder bearing
18 document number 2010-069754 in the official records of Sonoma County. This Notice of Trustee
19 Sale set a sale date of September 13, 2010. (hereinafter "TRUSTEE SALE") A true and correct
20 copy of the Notice of Trustee Sale is attached hereto and marked as Exhibit "I".

21 24. On August 19, 2010 PLAINTIFFS contacted GMAC by telephone at 888-714-
22 4622 and for the first time the authorized representative of GMAC told PLAINTIFFS that the
23 first loan modification had been denied.

24 25. During the August 19, 2010 telephone conversation, PLAINTIFFS told the
25 authorized representative of GMAC that Plaintiff Hitoshi Inoue was in the process of starting a
26 second job, and that this would generate sufficient income to pay the NOTE. The authorized
27 representative of GMAC told PLAINTIFFS that this would be sufficient income, and that they
28 should submit a second loan modification application based on the new salary level.

1 26. On August 23, 2010 PLAINTIFFS contacted GMAC by telephone at 888-714-
2 4622. During this telephone conversation PLAINTIFFS spoke with an authorized agent of
3 GMAC who did not identify himself to PLAINTIFFS, and thus the name and identity of this
4 agent is unknown to PLAINTIFFS (hereinafter "DOE-001"). DOE-001 told PLAINTIFFS that to
5 postpone the TRUSTEE SALE the total amount of the default on the NOTE would have to be
6 paid. DOE-001 told PLAINTIFFS that the amount for full reinstatement was \$15,626.02 and that
7 if this full amount was paid the TRUSTEE SALE would be cancelled.

8 27. PLAINTIFFS borrowed \$15,626.02 from members of PLAINTIFFS family living
9 in Japan in order to pay all of the back payments owed to GMAC on the NOTE.

10 28. On August 25, 2010 Plaintiff Hitoshi Inoue was hired as a consultant with
11 Technical Link.

12 29. On August 26, 2010 PLAINTIFFS submitted a second loan modification
13 application because of the increase in income represented by the Technical Link contract. A true
14 and correct copy of this application is attached hereto and marked as Exhibit "J".

15 30. On August 31, 2010 PLAINTIFFS sent a cashier's check in the amount of
16 \$15,626.02 via certified mail to GMAC in order to reinstate the NOTE (hereinafter
17 "REINSTATEMENT PAYMENT"). A true and correct copy of this cashiers check and certified
18 mail receipt is attached hereto and marked as Exhibit "K".

19 31. On August 31, 2010 PLAINTIFFS contacted GMAC by telephone at 888-714-
20 4622. During this telephone conversation PLAINTIFFS spoke with an authorized agent of
21 GMAC who did not identify himself to PLAINTIFFS, and thus the name and identity of this
22 agent is unknown to PLAINTIFFS (hereinafter "DOE-002"). During this telephone conversation,
23 DOE-002 confirmed the facsimile number for GMAC and the mailing address to which
24 PLAINTIFFS should send the REINSTATEMENT PAYMENT.

25 32. On August 31, 2010 PLAINTIFFS contacted GMAC a second time that day by
26 telephone at 888-714-4622. During this telephone conversation PLAINTIFFS spoke with an
27 authorized agent of GMAC who did not identify himself to PLAINTIFFS, and thus the name
28 and identity of this agent is unknown to PLAINTIFFS (hereinafter "DOE-003"). During this

1 telephone conversation PLAINTIFF confirmed to DOE-003 that the REINSTATEMENT
2 PAYMENT had been mailed by PLAINTIFFS to GMAC via certified mail.

3 33. On August 31, 2010 PLAINTIFFS sent a facsimile copy of the
4 REINSTATEMENT PAYMENT to GMAC at 866-709-4744. A true and correct copy of the
5 confirmation for this facsimile transmission is attached hereto and marked as Exhibit "L".

6 34. On September 1, 2010 GMAC sent a letter to PLAINTIFFS stating that the
7 second loan modification was under review and that GMAC would respond within 20 days. A
8 true and correct copy of this letter is attached hereto and marked as Exhibit "M".

9 35. On September 2, 2010 PLAINTIFFS contacted GMAC by telephone at 888-714-
10 4622. During this telephone conversation PLAINTIFFS spoke with an authorized agent of
11 GMAC who did not identify himself to PLAINTIFFS, and thus the name and identity of this
12 agent is unknown to PLAINTIFFS (hereinafter "DOE-004"). PLAINTIFFS asked DOE-004 if
13 GMAC had received the REINSTATEMENT PAYMENT. DOE-004 told PLAINTIFFS they
14 could not locate the REINSTATEMENT PAYMENT. GMAC also told PLAINTIFFS in this
15 telephone conversation that PLAINTIFFS' loan modification application was still being
16 reviewed.

17 36. On September 8, 2010 PLAINTIFFS contacted GMAC by telephone at 888-714-
18 4622. During this telephone conversation PLAINTIFFS spoke with an authorized agent of
19 GMAC who did not identify himself to PLAINTIFFS, and thus the name and identity of this
20 agent is unknown to PLAINTIFFS (hereinafter "DOE-005"). PLAINTIFFS asked DOE-005 if
21 GMAC had received the REINSTATEMENT PAYMENT. DOE-005 told PLAINTIFFS in this
22 telephone conversation that it was unknown whether GMAC had received the
23 REINSTATEMENT PAYMENT.

24 37. During the telephone conversation of September 8, 2010, DOE-005 also told
25 PLAINTIFFS that the TRUSTEE SALE had been postponed. PLAINTIFFS asked DOE-005 at
26 least three times to confirm that the TRUSTEE SALE was postponed. DOE-005 confirmed at
27 least three times that the TRUSTEE SALE was postponed.

28 38. On September 13, 2010 PLAINTIFFS received a letter from GMAC dated

1 September 8, 2010 stating the REINSTATEMENT PAYMENT was being returned because the
2 reinstatement amount had changed. A true and correct copy of this letter is attached hereto and
3 marked as Exhibit "N".

4 39. On September 13, 2010 GMAC and ETS SERVICES completed the TRUSTEE
5 SALE by holding a public auction for the sale of the PROPERTY. At this sale, MED&G
6 purchased the PROPERTY for \$244,144.84.

7 40. On the same day as the TRUSTEE SALE, MED&G posted a three day
8 notice to quit on the PROPERTY signed by Brian Burke of Dry Creek Real Estate. A true and
9 correct copy of this notice is attached hereto and marked as Exhibit "O".

10 41. After receiving the three day notice to quit, PLAINTIFFS contacted GMAC by
11 telephone at 888-714-4622. During this telephone conversation PLAINTIFFS spoke with an
12 authorized agent of GMAC who did not identify themself to PLAINTIFFS, and thus the name
13 and identity of this agent is unknown to PLAINTIFFS (hereinafter "DOE-006"). PLAINTIFFS
14 asked DOE-006 why the REINSTATEMENT PAYMENT had not been applied to the amount of
15 the default on the NOTE and DEED OF TRUST. DOE-006 told PLAINTIFFS that there was no
16 record of the REINSTATEMENT PAYMENT and that PLAINTIFFS could not do anything to
17 stop or reverse the TRUSTEE SALE because it had already occurred.

18 42. On September 13, 2010 PLAINTIFFS received a letter from MED&G'S agent,
19 Jim Cates of Dry Creek Real Estate. This letter offered to pay PLAINTIFFS an unknown cash
20 amount if PLAINTIFFS surrendered possession of the PROPERTY. A true and correct copy of
21 this letter is attached hereto and marked as Exhibit "P".

22 43. PLAINTIFFS filed the present action on September 20, 2010. On the same day
23 PLAINTIFFS recorded a Notice of Pendency of Action with the Sonoma County Recorder
24 bearing document number 2010-079903 in the official records of Sonoma County (hereinafter
25 "LIS PENDENS"). A true and correct copy the LIS PENDENS is attached hereto and marked as
26 Exhibit "Q".

27 44. On September 20, 2010 MED&G's agent, Joe Agost of Formost Insurance entered
28 the PROPERTY. During this visit, Mr. Agost confronted PLAINTIFFS, and banged on the front

1 door and the side of the house with his fist. PLAINTIFFS were deeply distressed by this
2 behavior. A copy of Mr. Agost's apology letter dated September 21, 2010 is attached hereto and
3 marked as Exhibit "R".

4 45. On September 20, 2010 Counsel for PLAINTIFFS contacted both MED&G and
5 ETS SERVICES and informed them of the COMPLAINT and the LIS PENDENS. (See
6 previously filed Declaration of Thomas P. Kelly III).

7 46. On September 21, 2010 ETS SERVICES recorded a trustee deed against the
8 PROPERTY in favor of MED&G bearing document number 2010-080387 in the official records
9 of Sonoma County (hereinafter "TRUSTEE DEED"). A true and correct copy of the TRUSTEE
10 DEED is attached hereto and marked as Exhibit "S".

11 47. On September 28, 2010 MED&G filed an Unlawful Detainer action against
12 PLAINTIFFS. A true and correct copy MED&G's Unlawful Detainer Action is attached hereto
13 and marked as Exhibit "T".

14 48. As a result of MED&G's Unlawful Detainer Action, PLAINTIFFS were forced to
15 leave their home on October 17, 2010 and surrender possession to MED&G on October 18,
16 2010. As a result of the surrender of possession, MED&G's Unlawful Detainer Action was
17 dismissed.

18 49. Throughout these events, PLAINTIFFS suffered severe emotional distress.
19 This included a deep sense of shock and humiliation at the sudden foreclosure after being led to
20 believe the TRUSTEE SALE would not go forward. Further, PLAINTIFFS believed that the
21 REINSTATEMENT PAYMENT made to GMAC would resolve the issue. The conduct of
22 MED&G's agent Joe Agost was also deeply distressing for PLAINTIFFS. These events have
23 also caused loss of sleep, depression, anxiety, and a sense of humiliation that these events have
24 occurred. Further, PLAINTIFFS have suffered and continue to suffer profound stress, anxiety,
25 and despair after being treated in the manner described above by all Defendants.

26 //

27 **FIRST CAUSE OF ACTION**

28 (Breach of Contract - Promissory Estoppel as Substitute for
Consideration against Defendant GMAC)

1 50. PLAINTIFFS incorporate herein each and every allegation set forth in paragraphs
2 1 through 49 as though fully set forth herein.

3 51. PLAINTIFFS had a right to reinstate the NOTE by tendering the default amount
4 at any time until five days prior to the TRUSTEE SALE under Cal. Civ. Code §2924c(e). (See
5 COMPLAINT, ¶9)

6 52. PLAINTIFFS had a right to reinstate the NOTE by tendering the default amount
7 at any time until five days prior to the TRUSTEE SALE under Paragraph 19 of the DEED OF
8 TRUST. (See COMPLAINT, ¶10)

9 53. PLAINTIFFS are informed and believe and on that basis allege that GMAC
10 made a clear and unambiguous promise to PLAINTIFFS that if PLAINTIFFS submitted the
11 REINSTATEMENT PAYMENT that GMAC would postpone the TRUSTEE SALE.

12 54. PLAINTIFFS allege that GMAC first made this promise on August 23, 2010,
13 when DOE-001 advised PLAINTIFFS that if \$15,626.02 was paid to GMAC the TRUSTEE
14 SALE would be cancelled. (See COMPLAINT, ¶26)

15 55. PLAINTIFFS allege that GMAC repeated this promise on September 8, 2010,
16 when DOE-005 advised PLAINTIFFS that the TRUSTEE SALE had been postponed. (See
17 COMPLAINT, ¶37)

18 56. PLAINTIFFS are informed and believe and on that basis allege that GMAC
19 should have reasonably expected that PLAINTIFFS would rely upon this promise, that GMAC
20 should have reasonably expected that PLAINTIFFS would substantially change their position in
21 reliance on this promise, and that GMAC should have reasonably expected that PLAINTIFFS
22 would forbear other remedies in reliance on this promise.

23 57. PLAINTIFFS in fact did rely on the promise of GMAC, DOE-001, and DOE-005,
24 by sending the REINSTATEMENT PAYMENT to GMAC. This reliance by PLAINTIFFS was
25 reasonable because the promise made by GMAC was from an authorized agent, and
26 PLAINTIFFS had no reason to believe that GMAC would not honor it's promise.

27 58. PLAINTIFFS in fact did rely on the promise of GMAC, DOE-001, and DOE-005
28 by not seeking to borrow money from other lenders, friends, or family to raise additional funds

1 to reinstate the NOTE at any time five days prior to the TRUSTEE SALE pursuant to the
2 provisions of California Civil Code §2924c(e). This reliance by PLAINTIFFS was reasonable
3 because the promise made by GMAC was from an authorized agent, and PLAINTIFFS had no
4 reason to believe that GMAC would not honor it's promise.

5 59. PLAINTIFFS in fact did rely on the promise of GMAC, DOE-001, and DOE-005
6 by forgoing bankruptcy protection under Title 11 of the United States Code. This reliance by
7 PLAINTIFFS was reasonable because the promise made by GMAC was from an authorized
8 agent, and PLAINTIFFS had no reason to believe that GMAC would not honor it's promise.

9 60. PLAINTIFFS are informed and believe and on that basis allege that GMAC is by
10 the conduct and representations set forth above estopped to deny that PLAINTIFF waived
11 performance of the promise of GMAC to postpone the TRUSTEE SALE.

12 61. PLAINTIFFS are informed and believe and on that basis allege that the promise
13 of GMAC was not honored because GMAC went forward with the TRUSTEE SALE despite
14 promising not to do so, a promise upon which PLAINTIFFS relied, and which has resulted in
15 injustice and loss to PLAINTIFFS. PLAINTIFFS have suffered damages because PLAINTIFFS
16 have lost title to the PROPERTY, have lost equity in the PROPERTY, were forced to abandon
17 possessions as a result of the TRUSTEE DEED, have suffered enormous anxiety and
18 humiliation, and was despicable conduct that subjected PLAINTIFFS to cruel and unjust
19 hardship in conscious disregard of PLAINTIFFS rights, so as to justify an award of exemplary
20 and punitive damages.

21 WHEREFORE, Plaintiffs pray for judgment as follows:

22 //

23 **SECOND CAUSE OF ACTION**

24 (To Set Aside Trustee's Sale against All Defendants)

25 62. PLAINTIFFS incorporate herein each and every allegation set forth in paragraphs
26 1 through 49 as though fully set forth herein.

27 63. PLAINTIFFS had a right to reinstate the NOTE by tendering the default amount
28 at any time until five days prior to the TRUSTEE SALE under Cal. Civ. Code §2924c(e). (See

1 COMPLAINT, ¶9)

2 64. PLAINTIFFS had a right to reinstate the NOTE by tendering the default amount
3 at any time until five days prior to the TRUSTEE SALE under Paragraph 19 of the DEED OF
4 TRUST. (See COMPLAINT, ¶10)

5 65. PLAINTIFFS are informed and believe and on that basis allege that GMAC
6 made a clear and unambiguous promise to PLAINTIFFS that if PLAINTIFFS submitted the
7 REINSTATEMENT PAYMENT that GMAC would postpone the TRUSTEE SALE.

8 66. PLAINTIFFS allege that GMAC first made this promise on August 23, 2010,
9 when DOE-001 advised PLAINTIFFS that if \$15,626.02 was paid to GMAC the TRUSTEE
10 SALE would be cancelled. (See COMPLAINT, ¶26)

11 67. PLAINTIFFS allege that GMAC repeated this promise on September 8, 2010,
12 when DOE-005 advised PLAINTIFFS that the TRUSTEE SALE had been postponed. (See
13 COMPLAINT, ¶37)

14 68. PLAINTIFFS are informed and believe and on that basis allege that GMAC
15 should have reasonably expected that PLAINTIFFS would rely upon this promise, that GMAC
16 should have reasonably expected that PLAINTIFFS would substantially change their position in
17 reliance on this promise, and that GMAC should have reasonably expected that PLAINTIFFS
18 would forbear other remedies in reliance on this promise.

19 69. PLAINTIFFS in fact did rely on the promise of GMAC, DOE-001, and DOE-005,
20 by sending the REINSTATEMENT PAYMENT to GMAC. This reliance by PLAINTIFFS was
21 reasonable because the promise made by GMAC was from an authorized agent, and
22 PLAINTIFFS had no reason to believe that GMAC would not honor it's promise.

23 70. PLAINTIFFS in fact did rely on the promise of GMAC, DOE-001, and DOE-005
24 by not seeking to borrow money from other lenders, friends, or family to raise additional funds
25 to reinstate the NOTE at any time five days prior to the TRUSTEE SALE pursuant to the
26 provisions of California Civil Code §2924c(e). This reliance by PLAINTIFFS was reasonable
27 because the promise made by GMAC was from an authorized agent, and PLAINTIFFS had no
28 reason to believe that GMAC would not honor it's promise.

1 71. PLAINTIFFS in fact did rely on the promise of GMAC, DOE-001, and DOE-005
2 by forgoing bankruptcy protection under Title 11 of the United States Code. This reliance by
3 PLAINTIFFS was reasonable because the promise made by GMAC was from an authorized
4 agent, and PLAINTIFFS had no reason to believe that GMAC would not honor it's promise.

5 72. PLAINTIFFS in fact did rely on the promise of GMAC, DOE-001, and DOE-005
6 by forgoing bankruptcy protection under Title 11 of the United States Code. This reliance by
7 PLAINTIFFS was reasonable because the promise made by GMAC was from an authorized
8 agent, and PLAINTIFFS had no reason to believe that GMAC would not honor it's promise.

9 73. Because GMAC misrepresented the amount necessary to cure the default on the
10 NOTE and DEED OF TRUST, PLAINTIFFS were denied their statutory right to reinstate the
11 NOTE as provided for in California Civil Code §2924c(e).

12 74. Because GMAC misrepresented the amount necessary to cure the default on the
13 NOTE and DEED OF TRUST, PLAINTIFFS were denied their contract right to reinstate the
14 NOTE as provided under Paragraph 19 of the DEED OF TRUST.

15 75. California Civil Code Section 2924 provides that a non-judicial foreclosure sale
16 pursuant to the power of sale clause contained in a deed of trust shall comply with all
17 requirements of applicable law.

18 76. PLAINTIFFS are further informed and believe and on that basis allege that by
19 failing to accurately state the amount necessary to cure the default on the NOTE and DEED OF
20 TRUST, and by failing to accept the REINSTATEMENT PAYMENT, GMAC did not comply
21 with all requirements of applicable law.

22 77. PLAINTIFFS are further informed and believe and on that basis allege that
23 because GMAC failed to comply with all requirements of applicable law, the TRUSTEE SALE
24 held on September 13, 2010 was invalid and should be set aside.

25 78. PLAINTIFFS are further informed and believe and on that basis allege that
26 because GMAC did not honor it's promise, the TRUSTEE SALE held on September 13, 2010
27 was invalid and should be set aside.

28 79. PLAINTIFFS are informed and believe and on that basis allege that because

1 GMAC failed to comply with all requirements of applicable law, PLAINTIFFS have suffered
2 injustice and loss. PLAINTIFFS have suffered damages because PLAINTIFFS have lost title to
3 the PROPERTY, have lost equity in the PROPERTY, were forced to abandon possessions as a
4 result of the TRUSTEE DEED, have suffered enormous anxiety and humiliation, and was
5 despicable conduct that subjected PLAINTIFFS to cruel and unjust hardship in conscious
6 disregard of PLAINTIFFS rights, so as to justify an award of exemplary and punitive damages.

7 80. PLAINTIFFS are informed and believe and on that basis allege that the promise
8 of GMAC was not honored because GMAC went forward with the TRUSTEE SALE despite
9 promising not to do so, a promise upon which PLAINTIFFS relied, and which has resulted in
10 injustice and loss to PLAINTIFFS. PLAINTIFFS have suffered damages because PLAINTIFFS
11 have lost title to the PROPERTY, have lost equity in the PROPERTY, were forced to abandon
12 possessions as a result of the TRUSTEE DEED, have suffered enormous anxiety and
13 humiliation, and was despicable conduct that subjected PLAINTIFFS to cruel and unjust
14 hardship in conscious disregard of PLAINTIFFS rights, so as to justify an award of exemplary
15 and punitive damages.

16 WHEREFORE, Plaintiffs pray for judgment as follows:

17 //

18 **THIRD CAUSE OF ACTION**
19 (To Set Aside Trustee's Deed against All Defendants)

20 81. PLAINTIFFS incorporate herein each and every allegation set forth in paragraphs
21 1 through 49 as though fully set forth herein.

22 82. PLAINTIFFS had a right to reinstate the NOTE by tendering the default amount
23 at any time until five days prior to the TRUSTEE SALE under Cal. Civ. Code §2924c(e). (See
24 COMPLAINT, ¶9)

25 83. PLAINTIFFS had a right to reinstate the NOTE by tendering the default amount
26 at any time until five days prior to the TRUSTEE SALE under Paragraph 19 of the DEED OF
27 TRUST. (See COMPLAINT, ¶10)

28 84. PLAINTIFFS are informed and believe and on that basis allege that GMAC

1 made a clear and unambiguous promise to PLAINTIFFS that if PLAINTIFFS submitted the
2 REINSTATEMENT PAYMENT that GMAC would postpone the TRUSTEE SALE.

3 85. PLAINTIFFS allege that GMAC first made this promise on August 23, 2010,
4 when DOE-001 advised PLAINTIFFS that if the REINSTATEMENT PAYMENT was paid to
5 GMAC the TRUSTEE SALE would be cancelled. (See COMPLAINT, ¶26)

6 86. PLAINTIFFS allege that GMAC repeated this promise on September 8, 2010,
7 when DOE-005 advised PLAINTIFFS that the TRUSTEE SALE had been postponed. (See
8 COMPLAINT, ¶37)

9 87. PLAINTIFFS are informed and believe and on that basis allege that GMAC
10 should have reasonably expected that PLAINTIFFS would rely upon this promise, that GMAC
11 should have reasonably expected that PLAINTIFFS would substantially change their position in
12 reliance on this promise, and that GMAC should have reasonably expected that PLAINTIFFS
13 would forbear other remedies in reliance on his promise.

14 88. PLAINTIFFS in fact did rely on the promise of GMAC, DOE-001, and DOE-005,
15 by sending the REINSTATEMENT PAYMENT to GMAC. This reliance by PLAINTIFFS was
16 reasonable because the promise made by GMAC was from an authorized agent, and
17 PLAINTIFFS had no reason to believe that GMAC would not honor it's promise.

18 89. PLAINTIFFS in fact did rely on the promise of GMAC, DOE-001, and DOE-005
19 by not seeking to borrow money from other lenders, friends, or family to raise additional funds
20 to reinstate the NOTE at any time five days prior to the TRUSTEE SALE pursuant to the
21 provisions of California Civil Code §2924c(e). This reliance by PLAINTIFFS was reasonable
22 because the promise made by GMAC was from an authorized agent, and PLAINTIFFS had no
23 reason to believe that GMAC would not honor it's promise.

24 90. PLAINTIFFS in fact did rely on the promise of GMAC, DOE-001, and DOE-005
25 by forgoing bankruptcy protection under Title 11 of the United States Code. This reliance by
26 PLAINTIFFS was reasonable because the promise made by GMAC was from an authorized
27 agent, and PLAINTIFFS had no reason to believe that GMAC would not honor it's promise.

28 91. PLAINTIFFS in fact did rely on the promise of GMAC, DOE-001, and DOE-005

1 by forgoing bankruptcy protection under Title 11 of the United States Code. This reliance by
2 PLAINTIFFS was reasonable because the promise made by GMAC was from an authorized
3 agent, and PLAINTIFFS had no reason to believe that the GMAC would not honor it's promise.

4 92. Because GMAC misrepresented the amount necessary to cure the default on the
5 NOTE and DEED OF TRUST, PLAINTIFFS were denied their statutory right to reinstate the
6 NOTE as provided for in California Civil Code §2924c(e).

7 93. Because GMAC misrepresented the amount necessary to cure the default on the
8 NOTE and DEED OF TRUST, PLAINTIFFS were denied their contract right to reinstate the
9 NOTE as provided under Paragraph 19 of the DEED OF TRUST.

10 94. California Civil Code Section 2924 provides that a non-judicial foreclosure sale
11 pursuant to the power of sale clause contained in a deed of trust shall comply with all
12 requirements of applicable law.

13 95. PLAINTIFFS are further informed and believe and on that basis allege that by
14 failing to accurately state the amount necessary to cure the default on the NOTE and DEED OF
15 TRUST, and by failing to accept the REINSTATEMENT PAYMENT, GMAC did not comply
16 with all requirements of applicable law.

17 96. PLAINTIFFS are further informed and believe and on that basis allege that
18 because GMAC failed to comply with all requirements of applicable law, the TRUSTEE SALE
19 held on September 13, 2010 was invalid, and that because the TRUSTEE SALE was invalid, the
20 TRUSTEE DEED is likewise invalid and should be set aside.

21 97. PLAINTIFFS are further informed and believe and on that basis allege that
22 because GMAC did not honor it's promise, the TRUSTEE SALE held on September 13, 2010
23 was invalid, and that because the TRUSTEE SALE was invalid, the TRUSTEE DEED is
24 likewise invalid and should be set aside.

25 98. PLAINTIFFS are informed and believe and on that basis allege that because
26 GMAC failed to comply with all requirements of applicable law, PLAINTIFFS have suffered
27 injustice and loss. PLAINTIFFS have suffered damages because PLAINTIFFS have lost title to
28 the PROPERTY, have lost equity in the PROPERTY, were forced to abandon possessions as a

1 result of the TRUSTEE DEED, have suffered enormous anxiety and humiliation, and was
2 despicable conduct that subjected PLAINTIFFS to cruel and unjust hardship in conscious
3 disregard of PLAINTIFFS rights, so as to justify an award of exemplary and punitive damages.

4 99. PLAINTIFFS are informed and believe and on that basis allege that the promise
5 of GMAC was not honored because GMAC went forward with the TRUSTEE SALE despite
6 promising not to do so, a promise upon which PLAINTIFFS relied, and which has resulted in
7 injustice and loss to PLAINTIFFS. PLAINTIFFS have suffered damages because PLAINTIFFS
8 have lost title to the PROPERTY, have lost equity in the PROPERTY, were forced to abandon
9 possessions as a result of the TRUSTEE DEED, have suffered enormous anxiety and
10 humiliation, and was despicable conduct that subjected PLAINTIFFS to cruel and unjust
11 hardship in conscious disregard of PLAINTIFFS rights, so as to justify an award of exemplary
12 and punitive damages.

13 WHEREFORE, Plaintiffs pray for judgment as follows:

14 //

15 **FOURTH CAUSE OF ACTION**

16 (For Recovery of Damages for Wrongful Foreclosure
against Defendant GMAC)

17 100. PLAINTIFFS incorporate herein each and every allegation set forth in paragraphs
18 1 through 49 as though fully set forth herein.

19 101. PLAINTIFFS had a right to reinstate the NOTE by tendering the default amount
20 at any time until five days prior to the TRUSTEE SALE under Cal. Civ. Code §2924c(e). (See
21 COMPLAINT, ¶9)

22 102. PLAINTIFFS had a right to reinstate the NOTE by tendering the default amount
23 at any time until five days prior to the TRUSTEE SALE under Paragraph 19 of the DEED OF
24 TRUST. (See COMPLAINT, ¶10)

25 103. PLAINTIFFS are informed and believe and on that basis allege that GMAC
26 made a clear and unambiguous promise to PLAINTIFFS that if PLAINTIFFS submitted the
27 REINSTATEMENT PAYMENT that GMAC would postpone the TRUSTEE SALE.
28

1 104. PLAINTIFFS allege that GMAC first made this promise on August 23, 2010,
2 when DOE-001 advised PLAINTIFFS that if the REINSTATEMENT PAYMENT was paid to
3 GMAC the TRUSTEE SALE would be cancelled. (See COMPLAINT, ¶26)

4 105. PLAINTIFFS allege that GMAC repeated this promise on September 8, 2010,
5 when DOE-005 advised PLAINTIFFS that the TRUSTEE SALE had been postponed. (See
6 COMPLAINT, ¶37)

7 106. PLAINTIFFS submitted the amount necessary to cure the default on the NOTE
8 and DEED OF TRUST as quoted by GMAC through it's authorized agent DOE-001 by making
9 the REINSTATEMENT PAYMENT. (See COMPLAINT, ¶26, ¶30)

10 107. Because GMAC misrepresented the amount necessary to cure the default on the
11 NOTE and DEED OF TRUST, PLAINTIFFS were denied their statutory right to reinstate the
12 NOTE as provided for in California Civil Code §2924c(e).

13 108. Because GMAC misrepresented the amount necessary to cure the default on the
14 NOTE and DEED OF TRUST, PLAINTIFFS were denied their contract right to reinstate the
15 NOTE as provided under Paragraph 19 of the DEED OF TRUST.

16 109. California Civil Code Section 2924 provides that a non-judicial foreclosure sale
17 pursuant to the power of sale clause contained in a deed of trust shall comply with all
18 requirements of applicable law.

19 110. PLAINTIFFS are further informed and believe and on that basis allege that by
20 failing to accurately state the amount necessary to cure the default on the NOTE and DEED OF
21 TRUST, and by failing to accept the REINSTATEMENT PAYMENT, GMAC did not comply
22 with all requirements of applicable law.

23 111. PLAINTIFFS are further informed and believe and on that basis allege that
24 GMAC was on notice as to all applicable law, including but not limited to Cal. Civ. Code
25 §2924c(e) and Paragraph 19 of the DEED OF TRUST, and should have known of same prior to
26 conducting the TRUSTEE SALE on the PROPERTY.

27 112. PLAINTIFFS are further informed and believe and on that basis allege that
28 GMAC was fully aware of and ratified those actions which were in violation of California Civil

1 Code §2924 and §2924e and Paragraph 19 of the DEED OF TRUST.

2 113. PLAINTIFFS are further informed and believe and on that basis allege that as a
3 result of the failure of GMAC to comply with all applicable law, including but not limited to Cal.
4 Civ. Code §2924c(e) and Paragraph 19 of the DEED OF TRUST, the TRUSTEE SALE was
5 wrongful, and that as a result PLAINTIFFS were wrongfully deprived of the fee title of the
6 PROPERTY.

7 114. PLAINTIFFS are informed and believe and on that basis allege that because
8 GMAC failed to comply with all requirements of applicable law, PLAINTIFFS have suffered
9 injustice and loss. PLAINTIFFS have suffered damages because PLAINTIFFS have lost title to
10 the PROPERTY, have lost equity in the PROPERTY, were forced to abandon possessions as a
11 result of the TRUSTEE DEED, have suffered enormous anxiety and humiliation, and was
12 despicable conduct that subjected PLAINTIFFS to cruel and unjust hardship in conscious
13 disregard of PLAINTIFFS rights, so as to justify an award of exemplary and punitive damages.

14 WHEREFORE, Plaintiffs pray for judgment as follows:

15 //

16 **FIFTH CAUSE OF ACTION**
17 (Fraud against Defendant GMAC)

18 115. PLAINTIFFS incorporate herein each and every allegation set forth in paragraphs
19 1 through 49 as though fully set forth herein.

20 116. PLAINTIFFS had a right to reinstate the NOTE by tendering the default amount
21 at any time until five days prior to the TRUSTEE SALE under Cal. Civ. Code §2924c(e). (See
22 COMPLAINT, ¶9)

23 117. PLAINTIFFS had a right to reinstate the NOTE by tendering the default amount
24 at any time until five days prior to the TRUSTEE SALE under Paragraph 19 of the DEED OF
25 TRUST. (See COMPLAINT, ¶10)

26 118. PLAINTIFFS are informed and believe and on that basis allege that GMAC
27 through it's authorized agent DOE-001 represented to PLAINTIFFS on August 23, 2010 that the
28 amount to cure the default on the NOTE and DEED OF TRUST was \$15,626.02. (See

1 COMPLAINT, ¶26)

2 119. PLAINTIFFS submitted the amount necessary to cure the default on the NOTE
3 and DEED OF TRUST as quoted by GMAC through it's authorized agent DOE-001 by making
4 the REINSTATEMENT PAYMENT. (See COMPLAINT, ¶26, ¶30)

5 120. Because GMAC misrepresented the amount necessary to cure the default on the
6 NOTE and DEED OF TRUST, PLAINTIFFS were denied their statutory right to reinstate the
7 NOTE as provided for in California Civil Code §2924c(e).

8 121. Because GMAC misrepresented the amount necessary to cure the default on the
9 NOTE and DEED OF TRUST, PLAINTIFFS were denied their contract right to reinstate the
10 NOTE as provided under Paragraph 19 of the DEED OF TRUST.

11 122. California Civil Code §2924(e) provides as follows:

12 There is a rebuttable presumption that the beneficiary actually knew of all unpaid
13 loan payments on the obligation owed to the beneficiary and secured by the deed
of trust or mortgage subject to the notice of default.

14 123. PLAINTIFFS are informed and believe and on that basis allege that GMAC not
15 only knew the true reinstatement amount, but was presumed to know the true reinstatement
16 amount under California Civil Code §2924(e).

17 124. PLAINTIFFS are informed and believe and on that basis allege that GMAC
18 through it's authorized agent DOE-001 intentionally misstated the reinstatement amount to
19 PLAINTIFFS, and this constitutes a fraudulent misrepresentation.

20 125. GMAC did not inform PLAINTIFFS that the REINSTATEMENT AMOUNT was
21 insufficient until after the five day period tolled under California Civil Code §2924c(e). (See
22 COMPLAINT, ¶38)

23 126. GMAC did not notify PLAINTIFFS of the correct reinstatement amount until
24 GMAC sent a letter to PLAINTIFFS on September 8, 2010 which is exactly five days before the
25 TRUSTEE SALE. (See COMPLAINT, ¶38)

26 127. PLAINTIFFS are informed and believe and on that basis allege that GMAC knew
27 that a letter sent first class mail on September 8, 2010 would not be received by PLAINTIFFS
28 until after the five day-period of §2924c(e) had expired, thereby preventing PLAINTIFFS from

1 making any additional payment for full reinstatement.

2 128. PLAINTIFFS are informed and believe and on that basis allege that when GMAC
3 through it's authorized agent DOE-001 made the aforesaid fraudulent misrepresentations to
4 PLAINTIFFS they knew them to be false and made them with the intention to deceive and
5 defraud PLAINTIFFS and to induce PLAINTIFFS to act in reliance on these fraudulent
6 misrepresentations in the manner hereafter alleged, or with the expectation that PLAINTIFFS
7 would so act, which resulted in PLAINTIFFS losing title to their interest in the PROPERTY at
8 the TRUSTEE SALE.

9 129. PLAINTIFFS were ignorant of the falsity of the fraudulent representations made
10 by GMAC through it's authorized agent DOE-001 and believed them to be true.

11 130. PLAINTIFFS relied upon the fraudulent representations of GMAC made by
12 GMAC's authorized agent DOE-001 by making the REINSTATEMENT PAYMENT.

13 131. PLAINTIFFS reliance on the fraudulent misrepresentations of GMAC was
14 justified as the representations were made by an authorized agent of GMAC, and PLAINTIFFS
15 had no reason to doubt the veracity of the fraudulent misrepresentations.

16 132. As a proximate result of this reliance on the fraudulent misrepresentations of
17 GMAC, PLAINTIFFS were induced to take no additional steps to protect their interest in the
18 PROPERTY. Had PLAINTIFFS known the true facts, they could have pursued alternate
19 measures to avoid the TRUSTEE SALE, including but not limited to, borrowing additional funds
20 to reinstate the NOTE and filing for bankruptcy protection under Title 11 of the United States
21 Code.

22 133. In addition, as a proximate result of the fraudulent misrepresentations of GMAC,
23 PLAINTIFFS have suffered severe emotional distress in the form of inability to sleep, panic
24 attacks, depression, and daily constant anxiety.

25 134. The aforementioned conduct of GMAC, was an intentional fraudulent
26 misrepresentation, deceit or concealment of material facts known to GMAC, and were made
27 intentionally by GMAC in order to deprive PLAINTIFFS of the PROPERTY, legal rights or
28 otherwise causing injury, and the actions of GMAC was despicable conduct that subjected

1 PLAINTIFFS to cruel and unjust hardship in conscious disregard of PLAINTIFFS rights, so as
2 to justify an award of exemplary and punitive damages.

3 WHEREFORE, Plaintiffs pray for judgment as follows:

4 //

5 **SIXTH CAUSE OF ACTION**

6 (Negligent Misrepresentation against Defendant GMAC)

7 135. PLAINTIFFS incorporate herein each and every allegation set forth in paragraphs
8 1 through 49 as though fully set forth herein.

9 136. PLAINTIFFS had a right to reinstate the NOTE by tendering the default amount
10 at any time until five days prior to the TRUSTEE SALE under Cal. Civ. Code §2924c(e). (See
11 COMPLAINT, ¶9)

12 137. PLAINTIFFS had a right to reinstate the NOTE by tendering the default amount
13 at any time until five days prior to the TRUSTEE SALE under Paragraph 19 of the DEED OF
14 TRUST. (See COMPLAINT, ¶10)

15 138. PLAINTIFFS are informed and believe and on that basis allege that GMAC
16 through it's authorized agent DOE-001 represented to PLAINTIFFS on August 23, 2010 that the
17 amount to cure the default on the NOTE and DEED OF TRUST was \$15,626.02. (See
18 COMPLAINT, ¶26)

19 139. PLAINTIFFS submitted the amount necessary to cure the default on the NOTE
20 and DEED OF TRUST as quoted by GMAC through it's authorized agent DOE-001 by making
21 the REINSTATEMENT PAYMENT. (See COMPLAINT, ¶26, ¶30)

22 140. Because GMAC misrepresented the amount necessary to cure the default on the
23 NOTE and DEED OF TRUST, PLAINTIFFS were denied their statutory right to reinstate the
24 NOTE as provided for in California Civil Code §2924c(e).

25 141. Because GMAC misrepresented the amount necessary to cure the default on the
26 NOTE and DEED OF TRUST, PLAINTIFFS were denied their contract right to reinstate the
27 NOTE as provided under Paragraph 19 of the DEED OF TRUST.

28 142. When GMAC through it's authorized agent DOE-001 made the representations to

1 PLAINTIFFS set forth above they had no reasonable grounds for believing them to be true.

2 143. When GMAC through it's authorized agent DOE-001 made the representations to
3 PLAINTIFFS set forth above they were negligent and were made with the knowledge that
4 PLAINTIFFS would rely on those representations, and with the expectation that PLAINTIFFS
5 would rely on those representations, and with the intent of preventing PLAINTIFFS from further
6 inquiry into available remedies for the TRUSTEE SALE.

7 144. In addition, as a proximate result of the negligent conduct of GMAC,
8 PLAINTIFFS have suffered severe emotional distress in the form of inability to sleep, panic
9 attacks, depression, and daily constant anxiety.

10 145. The aforementioned conduct of GMAC, was an negligent misrepresentation, of
11 material facts known to GMAC, and were negligently made by GMAC which resulted in
12 PLAINTIFFS loss of the PROPERTY, legal rights or otherwise causing injury, and the actions
13 of GMAC was despicable conduct that subjected PLAINTIFFS to cruel and unjust hardship in
14 conscious disregard of PLAINTIFFS rights, so as to justify an award of exemplary and punitive
15 damages.

16 WHEREFORE, Plaintiffs pray for judgment as follows.

17 //

18 **SEVENTH CAUSE OF ACTION**
19 (Negligence against Defendant GMAC)

20 146. PLAINTIFFS incorporate herein each and every allegation set forth in paragraphs
21 1 through 49 as though fully set forth herein.

22 147. PLAINTIFFS had a right to reinstate the NOTE by tendering the default amount
23 at any time until five days prior to the TRUSTEE SALE under Cal. Civ. Code §2924c(e). (See
24 COMPLAINT, ¶9)

25 148. PLAINTIFFS had a right to reinstate the NOTE by tendering the default amount
26 at any time until five days prior to the TRUSTEE SALE under Paragraph 19 of the DEED OF
27 TRUST. (See COMPLAINT, ¶10)

28 149. PLAINTIFFS are informed and believe and on that basis allege that GMAC

1 through it's authorized agent DOE-001 represented to PLAINTIFFS on August 23, 2010 that the
2 amount to cure the default on the NOTE and DEED OF TRUST was \$15,626.02. (See
3 COMPLAINT, ¶26)

4 150. PLAINTIFFS submitted the amount necessary to cure the default on the NOTE
5 and DEED OF TRUST as quoted by GMAC through it's authorized agent DOE-001 by making
6 the REINSTATEMENT PAYMENT. (See COMPLAINT, ¶26, ¶30)

7 151. Because GMAC misrepresented the amount necessary to cure the default on the
8 NOTE and DEED OF TRUST, PLAINTIFFS were denied their statutory right to reinstate the
9 NOTE as provided for in California Civil Code §2924c(e).

10 152. Because GMAC misrepresented the amount necessary to cure the default on the
11 NOTE and DEED OF TRUST, PLAINTIFFS were denied their contract right to reinstate the
12 NOTE as provided under Paragraph 19 of the DEED OF TRUST.

13 153. PLAINTIFFS are informed and believe and on that basis allege that at all
14 applicable times GMAC owed a duty to PLAINTIFFS to conduct all business related to the
15 NOTE and DEED OF TRUST with the level of care of a reasonable loan servicer. Further,
16 GMAC owed a duty to PLAINTIFFS to conduct all activities related to the TRUSTEE SALE in
17 accord with all applicable law, including those duties imposed on GMAC under California Civil
18 Code §2924, et. seq. And under Paragraph 19 of the DEED OF TRUST.

19 154. PLAINTIFFS are informed and believe and on that basis allege that on September
20 13, 2010 GMAC carelessly and negligently permitted the TRUSTEE SALE to occur on the
21 PROPERTY despite the fact that PLAINTIFFS had offered the REINSTATEMENT
22 PAYMENT, and that PLAINTIFF had been misled as to the correct amount by GMAC.

23 155. PLAINTIFFS are informed and believe and on that basis allege that this conduct
24 breached the duty GMAC owed to PLAINTIFFS, thus causing damage to PLAINTIFFS in an
25 amount according to proof.

26 156. The aforementioned conduct of GMAC, was negligent and has resulted in
27 PLAINTIFFS loss of the PROPERTY, legal rights or otherwise causing injury, and the actions
28 of GMAC was despicable conduct that subjected PLAINTIFFS to cruel and unjust hardship in

1 conscious disregard of PLAINTIFFS rights, so as to justify an award of exemplary and punitive
2 damages.

3 WHEREFORE, Plaintiffs pray for judgment as follows:

4 //

5 **EIGHTH CAUSE OF ACTION**
6 (Quiet Title against Defendant MED&G)

7 157. PLAINTIFFS incorporate herein each and every allegation set forth in paragraphs
8 1 through 49 as though fully set forth herein.

9 158. PLAINTIFFS had a right to reinstate the NOTE by tendering the default amount
10 at any time until five days prior to the TRUSTEE SALE under Cal. Civ. Code §2924c(e). (See
11 COMPLAINT, ¶9)

12 159. PLAINTIFFS had a right to reinstate the NOTE by tendering the default amount
13 at any time until five days prior to the TRUSTEE SALE under Paragraph 19 of the DEED OF
14 TRUST. (See COMPLAINT, ¶10)

15 160. PLAINTIFFS are informed and believe and on that basis allege that GMAC
16 through it's authorized agent DOE-001 represented to PLAINTIFFS on August 23, 2010 that the
17 amount to cure the default on the NOTE and DEED OF TRUST was \$15,626.02. (See
18 COMPLAINT, ¶26)

19 161. PLAINTIFFS submitted the amount necessary to cure the default on the NOTE
20 and DEED OF TRUST as quoted by GMAC through it's authorized agent DOE-001 by making
21 the REINSTATEMENT PAYMENT. (See COMPLAINT, ¶26, ¶30)

22 162. Because GMAC misrepresented the amount necessary to cure the default on the
23 NOTE and DEED OF TRUST, PLAINTIFFS were denied their statutory right to reinstate the
24 NOTE as provided for in California Civil Code §2924c(e).

25 163. Because GMAC misrepresented the amount necessary to cure the default on the
26 NOTE and DEED OF TRUST, PLAINTIFFS were denied their contract right to reinstate the
27 NOTE as provided under Paragraph 19 of the DEED OF TRUST.

28 164. PLAINTIFFS are informed and believe and on that basis allege that the

1 TRUSTEE SALE was conducted in violation of applicable law as set forth above, and that this
2 violation renders any claim to title on the PROPERTY arising from the TRUSTEE SALE or
3 TRUSTEE DEED is invalid.

4 165. PLAINTIFFS are informed and believe and on that basis allege that title to the
5 PROPERTY is allegedly held by MED&G, that the title of MED&G in the PROPERTY arises
6 from the TRUSTEE SALE, and that title is wrongfully held by MED&G because the TRUSTEE
7 SALE and TRUSTEE DEED are invalid.

8 166. PLAINTIFFS are informed and believe and on that basis allege that as a result of
9 the invalid TRUSTEE SALE and TRUSTEE DEED, MED&G has no right, title, estate, lien, or
10 interests whatever in the PROPERTY or any part thereof.

11 167. Therefore, PLAINTIFFS seek to quiet title in the name of PLAINTIFFS as of
12 September 13, 2010.

13 WHEREFORE, Plaintiffs pray for judgment as follows:

14 //

15 **NINTH CAUSE OF ACTION**
16 (Declaratory Relief against All Defendants)

17 168. PLAINTIFFS incorporate herein each and every allegation set forth in paragraphs
18 1 through 49 as though fully set forth herein.

19 169. An actual controversy arisen now exists between PLAINTIFFS and Defendants
20 GMAC, ETS SERVICES, and MED&G concerning their respective rights and duties in that
21 PLAINTIFFS maintains that the TRUSTEE SALE as alleged above was not conducted in
22 accordance with all applicable law, and as a result, the TRUSTEE SALE and TRUSTEE DEED
23 should be set aside.

24 170. GMAC, ETS SERVICES, and MED&G dispute the foregoing conditions and
25 contend that the TRUSTEE SALE and TRUSTEE DEED were properly conducted and recorded
26 and in accordance with all applicable law.

27 171. PLAINTIFFS desire judicial determination of their rights and duties in the
28 determination as to whether the TRUSTEE SALE and TRUSTEE DEED were properly

1 conducted and recorded and in accordance with all applicable law.

2 172. A judicial determination is necessary and appropriate at this time under the
3 circumstances in that PLAINTIFFS may ascertain their rights and duties pursuant to the conduct
4 of the TRUSTEE SALE and as to the validity of the TRUSTEE DEED.

5 173. PLAINTIFFS further hereby seek declaratory relief from this Court that MED&G
6 was not a bona fide purchaser for value as a result of the TRUSTEE SALE or TRUSTEE DEED.

7 WHEREFORE, Plaintiffs pray for judgment as follows:

8 //

9 **TENTH CAUSE OF ACTION**

10 (Intentional Infliction of Emotional Distress against Defendant MED&G)

11 174. PLAINTIFFS incorporate herein each and every allegation set forth in paragraphs
12 1 through 49 as though fully set forth herein.

13 175. PLAINTIFFS are informed and believe and on that basis allege that the MED&G
14 knew or should have known that any person whose primary residence is the subject of a non-
15 judicial foreclosure is in a vulnerable state, and likely to suffer emotional distress as a result of
16 such a proceeding.

17 176. PLAINTIFFS are informed and believe and on that basis allege that the actions
18 of the agent of MED&G, Joe Agost of Formost Insurance, which included entering the
19 PROPERTY without any right to do so, banging on the front door and banging on the side of the
20 house with his fist was intentional and unreasonable conduct which was done with the
21 recognition that these actions were likely to result in illness through mental distress for
22 PLAINTIFFS.

23 177. PLAINTIFFS are informed and believe and on that basis allege that the actions
24 of the agent of MED&G in brining an Unlawful Detainer Action against PLAINTIFFS was
25 calculated to cause pain and suffering for PLAINTIFFS and was intentional and unreasonable
26 conduct which was done with the recognition that these actions were likely to result in illness
27 through mental distress for PLAINTIFFS.

28 178. In addition, as a proximate result of this conduct of MED&G, PLAINTIFFS

1 have suffered, and continue to suffer, severe emotional distress in the form of inability to sleep,
2 panic attacks, depression, and daily constant anxiety.

3 179. The aforementioned conduct of MED&G was intentional and despicable
4 conduct that subjected PLAINTIFFS to cruel and unjust hardship in conscious disregard of
5 PLAINTIFFS rights, so as to justify an award of exemplary and punitive damages.

6 WHEREFORE, Plaintiffs pray for judgment as follows:

7 //

8 **PRAYER FOR RELIEF**

9 A. For a judgment estopping GMAC from denying there was a Contract and
10 damages for breach thereof to PLAINTIFFS according to proof; and

11 D. For a judgment setting aside the TRUSTEE SALE; and

12 E. For a judgment setting aside the TRUSTEE DEED; and

13 F. For a judgment awarding damages to PLAINTIFFS from GMAC for Recovery of
14 Damages for Wrongful Foreclosure according to proof; and

15 G. For a judgment awarding damages to PLAINTIFFS from GMAC for Fraud
16 according to proof; and

17 H. For a judgment awarding damages to PLAINTIFFS from GMAC for Negligent
18 Misrepresentation according to proof; and

19 I. For a judgment to Quiet Title to the PROPERTY in the name of PLAINTIFFS
20 against MED&G; and

21 K. For declaration that the TRUSTEE SALE and TRUSTEE DEED failed to comply
22 with applicable law and have no force or effect; and

23 L. For a judgment awarding damages to PLAINTIFFS against MED&G for
24 Intentional Infliction of Emotional Distress according to proof; and

25 M. For general damages against all Defendants according to proof; and

26 N. For exemplary damages against all Defendants according to proof; and

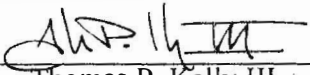
27 O. For punitive damages against all Defendants according to proof; and

28 P. For Prejudgment interest; and

1 Q. For costs of suit herein incurred, including attorney's fees; and

2 R. For such other and further relief as the Court may deem proper.

3
4 Dated: MARCH 20, 2010

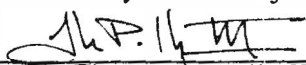

Thomas P. Kelly III
Attorney for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs Hitoshi Inoue and Wakana Inoue hereby demand a jury trial on all claims.

Dated: March 20, 2011



Thomas P. Kelly III
Attorney for Plaintiffs

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3 VERIFICATIONS TO FOLLOW
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